HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARNUNA REDDY

WRIT APPEAL No. 1680 OF 2002

Between:

The Secretary,
Ministry of Home Affairs, (FF Division),
Govt., of India, New Delhi & another.

… Appellants

AND

Vajenapalli Pullamma & another

… Respondents

Counsel for the Appellants : Shri A. Rajashekar Reddy
Assistant Solicitor General

Counsel for respondent No.1 : Shri K. Chinna Baba

: JUDGMENT :

October 19,-2006

Per C.V.Nagarjuna Reddy, J

This appeal is directed against order dated 12.10.2001 passed by the learned Singe Judge, whereby he allowed the writ petition filed by 1st respondent, Smt.Vajenepalli Pullamma, and directed the non-petitioners (appellants herein) to release pension to her under the Swatantrata Sainik Samman Pension Scheme, 1980 (for short, 'the 1980 Scheme') with effect from the date of application i.e., 20.07.1981.

The 1st respondent is the wife of late Seetharamaiah. In the writ petition, she pleaded that her husband actively participated in the National Freedom Movement during the year 1946-48 and even during the post-independence period he participated in the movement against the Nizam Government and in support of merger of Hyderabad State in the Indian Union. The Nizam Government filed criminal case No.83/1/13567 against her husband and two others before the First Class Magistrate, Yellendu, Khammam District. The 1st respondent's husband went underground to join the movement as per the directions of the State Congress Committee in Machilinipalem Border camp of Nandigama Taluq, Krishna District, which was headed by the camp in-charge Sri Vettikonda Kotaiah and he fought against the Nizam Government till the police action. The said Sri Vettikonda Kotaiah and another freedom fighter Sri Manikonda Satyanarayana Sastry certified that the 1st respondent's husband had taken part in the freedom struggle. After the death of her husband on 06.08.1980, the

1st respondent submitted an application to the appellants for sanction of pension under the 1980 Scheme. The application was accompanied by the certificates in proof of the participation of the 1st respondent's husband in freedom movement. After getting an enquiry held, the District Collector, Khammam, submitted report dated 17.01.1995 to the State Government, wherein he recommended grant of pension to the 1st respondent. On being required, the 1st respondent submitted the originals of death and legal-heir certificates of her husband on 29.04.1995. While there was no communication to the 1st respondent, she came to learn that the appellants have considered the application of Sri Sadineni Krishnaiah, who was a co-accused with her husband in criminal case No.83/1/13567 and sanctioned the freedom fighters pension on 27.01.1987. She then filed Writ Petition No.8284 of 1996, which was disposed of on 19.04.1996 with the direction to the appellants to consider her application and place the same before the screening committee in any one of the next three meetings. However, the concerned authority did not take action in compliance of the Court's order. This led to the filing of contempt case by the 1st respondent. During the pendency of the contempt case, appellant No.1 through its advocate served proceedings

No.112/2111/4-FF dated 28.02.1992 on the 1st respondent, whereby her claim was rejected. The latter filed Writ Petition No.27389 of 1996 and prayed for quashing communication dated 28.02.1992. She also filed W.P.M.P. No.33829 of 1996 for grant of interim relief. By an order dated 11.06.1997, a learned Single Judge of this Court directed appellant No.1 to sanction and pay pension to respondent No.1 under the 1980 Scheme in accordance with the recommendations made by the screening committee. Thereafter, the 1st appellant through its

communication dated 01.09.1998 sent to the Pay and Accounts Officer (Pension and Miscellaneous), Ministry of Home Affairs, informed that in pursuance of the orders of this Court, the President of India has sanctioned provisional pension to the 1st respondent by giving "benefit of doubt" at the rate of Rs.3000/- per month with effect from 08.02.1997. This was further modified by the 1st appellant vide proceedings dated 23.12.1998, wherein the amount of Rs.3000/- was reduced to Rs.1500/- for the period from 08.02.1997 to 14.08.1997 and an amount of Rs.3000/- per month was sanctioned with effect from 15.08.1997.

In view of the aforementioned development, the 1st respondent filed W.P.M.P.No.10158 of 1999 for amendment of the writ petition and grant of leave to challenge proceedings dated 01.09.1998 as amended by proceedings dated 23.12.1998 and for issue of a mandamus to the non-petitioners to pay her pension with effect from the date of application. The learned Single Judge allowed the application and granted leave to the 1st respondent to amend the writ petition, and after hearing the arguments, he allowed the writ petition.

Sri A. Rajashekar Reddy, learned Assistant Solicitor General contended that the reason for sanctioning the freedom fighters pension to the 1st respondent only with effect from 23.01.1998 was that the Government of India was not fully convinced with her eligibility and entitlement to receive pension under the 1980 Scheme, but she was given benefit of doubt. He submitted that denial of pension to the 1st respondent with effect from the date of application is based on the policy framed by the Government of India that those who are granted pension under the 1980 Scheme by giving benefit of doubt shall not be

entitled to such pension with effect from the date of application. He further submitted that this decision of the 1st appellant is in conformity with the judgment dated 24.04.1995 of the Supreme Court in **Union of India v. Ganesh Chandra Dulai.**

On our direction, the learned Assistant Solicitor General produced the file relating to this case. We have perused the recommendations of the committee signed by as many as seven out of eight members of the committee, which met on 08.02.1997. The committee considered the 1st respondent's application as "a genuine case" as her husband had undergone suffering for over six months. The committee, therefore, recommended the 1st respondent's application for freedom fighters pension. When the 1st respondent's application along with the committee's recommendation was placed before the 1st appellant, it was noted that the committee had earlier rejected her application in the year 1986 since, in the cases which were earlier rejected and subsequently recommended by the committee, pension is sanctioned from the date of recommendation as per policy guidelines. In our opinion, the reason assigned by the 1st appellant for denying the benefit of pension with effect from the date of application is legally unsustainable and a writ of mandamus deserves to be issued for payment of pension to her from the date of application in accordance with the ratio of the judgment of the Supreme Court in **Mukund Lal Bhandari v. Union of India**[1]. The mere fact that on an earlier occasion, the committee did not recommend the case of respondent No.1 does not ipso facto make the 1st respondent's case as falling under "benefit of doubt" category. If it were be so, the committee itself would have treated the 1st respondent's application as

a doubtful one. However, the fact of the matter is that in its meeting held on 08.02.1997, the committee had unreservedly recommended the application of the 1st respondent and recommended grant of pension to her without specifying any condition. Therefore, her case cannot be treated as one falling in the category of "doubtful case." The very fact that the latter committee has accepted the 1st respondent's application as genuine shows that the earlier committee's rejection was not proper and justified. That apart, no material has been placed before the Court by the learned Assistant Solicitor General to show that respondent No.1 was not entitled to be treated as the widow of a freedom fighter within the meaning of the 1980 Scheme or that the documents produced by her were not genuine. Therefore, the bald assertion contained in the counter affidavit filed by the 1st appellant, which appears to be the basis of the argument of Sri A.Rajasekhar Reddy cannot be accepted for depriving the 1st respondent of her legitimate right to get pension under the 1980 Scheme with effect from the date of application.

In view of the above discussion, we hold that the learned Single Judge did not commit any error when he directed that the writ petitioner (1st respondent herein) is entitled to the benefit of pension under the 1980 Scheme with effect from the date of application i.e., 20.07.1981.

In the result, the appeal is dismissed.

As a sequel to dismissal of the appeal, W.A.M.P.No.3139 of 2002 filed by the appellants for interim relief is also dismissed.

C.V.NNAGARJUNA REDDY, J

19th October, 2006

G.S.SINGHVI, CJ

ES

---

[1] AIR 1993 SC 2127 = 1993 Supp (3) SCC 2